R01

{In Archive} Re: Fw: DEADLINE: 5:00 PM Friday 6/25 Fw: Enrolled Bill S1660 Formaldehyde Standards for Composite Wood Products Act

Brian Symmes to: Sheila Canavan
Cc: Tala Henry
06/24/2010 09:01 AM

History: This message has been forwarded.
Archive: This message is being viewed in an archive.

here's a recent views letter -- Doug will be scheduling a meeting this afternoon for us to sit down

HR 2190 Waxman.pdf

Brian Symmes
Office of Pollution Prevention and Toxics/Office of Chemical Safety and Pollution Prevention
U.S. EPA
202-566-1983
symmes.brian@epa.gov

Sheila Canavan Yes. 06/24/2010 08:11:01 AM

From: Sheila Canavan/DC/USEPA/US
To: Tala Henry/DC/USEPA/US@EPA
Cc: "Brian Symmes" <Symmes.Brian@epamail.epa.gov>
Date: 06/24/2010 08:11 AM
Subject: Re: Fw: DEADLINE: 5:00 PM Friday 6/25 Fw: Enrolled Bill S1660 Formaldehyde Standards for Composite Wood Products Act

Yes.

An **ENROLLED BILL** is the final version passed in identical form by both chambers and sent to the president. I

Sheila Canavan
National Program Chemicals Division
USEPA
Phone 202/566-1978
Fax 202/566-0473
Mail Code 7404 T

Tala Henry Cindy out on vacation...may need your help on t... 06/23/2010 07:26:17 PM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 1 1 2010

THE ADMINISTRATOR

Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Waxman:

Thank you for the opportunity to provide comments on H.R. 2190, the Mercury Pollution Reduction Act of 2009, as amended. For chlor-alkali facilities planning to cease operations, this bill would ban the use of mercury in these facilities as of June 30, 2013. For those facilities planning to transition to non-mercury manufacturing processes, the bill would ban use of mercury as of June 30, 2015. The bill also would ban the owner or operator of a chlor-alkali facility from exporting or selling the mercury for export. The export prohibition would take effect on the date of enactment.

Chlor-alkali manufacturing is a significant source of global mercury releases and one of the largest industrial uses of mercury in the United States. These manufacturing plants typically have a working life of 40 to 60 years. No new facilities using the mercury cell chlor-alkali process have been constructed since 1970, the use of the mercury cell process in new plants is prohibited, and emissions from existing plants are regulated under Section 112 of the Clean Air Act (CAA).

Since 1996, seven plants have closed and three have converted to alternate technologies. Domestically, there are four chlor-alkali plants in operation still using mercury, located in Ohio, West Virginia, Tennessee, and Georgia. The good news is there are two alternative technologies that can be used in the chlor-alkali production process – membrane cell and diaphragm cell. Both processes are more energy efficient and have similar or slightly lower costs than using mercury and do not pose the same environmental concerns.

Due to mercury's potential to cause environmental and public health problems, the availability of non-mercury technology, and the Administration's commitment to reduce mercury emissions and control the global transport of mercury, we wholeheartedly support the goals of H.R. 2190 to prohibit the use of mercury in chlor-alkali plants and the export of mercury from

existing chlor-alkali plants. It is important from both an environmental and human health perspective that the United States not permit the significant quantities of mercury resulting from application of this bill to be exported to the global market. We want to be certain that as chlor-alkali facilities transition away from mercury, the excess mercury is properly managed and stored.

The United States is currently involved in international negotiations to address sources of mercury globally, including mercury use in chlor-alkali plants. It is important that U.S. law supports the ability of the United States to make and to encourage other countries to make, meaningful commitments during international negotiations. Given the clear public health dangers from mercury, the Administration believes that Congress should enact legislation to phase out mercury use in chlor-alkali plants as soon as practicable as and no later than June 2015.

We also note that there is an industrial process used to produce vinyl chloride monomer that also uses mercury as a catalyst. While this process is not currently used in the United States, a prohibition on this process to ensure that it cannot be used may also merit consideration by the committee.

Thank you and other Members on your committee for the leadership on this issue. In order to ensure this legislation accomplishes the stated policy goals, EPA has attached drafting suggestions. We will be glad to work with your staff to describe the reasons behind our drafting suggestions. If I can be of further assistance, please let me know, or have your staff contact Christina Moody at 202-564-0260.

Sincerely,

Lisa P. Jackson

Attachment

Prepared 16 Dec 09
EPA Drafting Suggestions
H.R. 2190, the Mercury Pollution Reduction Act, as amended

Given the clear public health dangers from mercury and to ensure that U.S law supports the ability of the United States to take on, and to encourage other countries to take on, meaningful commitments during international negotiations on the reduction and control of global mercury, the Administration believes that Congress should enact legislation to phase out mercury use in chlor-alkali plants as soon as practicable, and no later than the new date of June 2015.

The following drafting suggestions address the bill as reported out by the Committee on Energy and Commerce on October 21, 2009:

1. The legislation should be clear that the export ban covers both elemental mercury (including when part of a mixture), and mercury compounds. This is important because chlor-alkali plants generate both elemental mercury and mercury compounds.

2. To ensure that the export ban is comprehensive and effective, it should focus on the mercury that is subject to the ban instead of focusing on the exporting party.[1] Without this correction there could be scenarios under which people other than owners or operators could legally export the mercury from chlor-alkali plants.

To address both these issues, we suggest revising the Export Ban language in Section 4 of the bill to say:

> EXPORT BAN.—Effective on the date of the enactment of this section, the export of any elemental mercury (including as part of a mixture) or any mercury compounds that is owned, stored, used, or held by a chlor-alkali facility on or after the date of enactment of this section is prohibited.

3 To reinforce consistency with the Mercury Export Ban Act of 2008 and U.S. international trade obligations, we suggest adding a paragraph after the Export Ban language as follows:

(d) ESSENTIAL USE EXEMPTION. – As of the date of the enactment of this Act, any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (c) , and the provisions of subparagraph (c)(4) of section 12 of the Toxic Substances Control Act (15 U.S.C. 2611(c)(4)) shall apply to such a petition.

---

[1] The export ban contemplated under HR 2190 includes mercury compounds, while the provisions of the Mercury Export Ban Act of 2008 refer to "elemental mercury".

4. As chlor-alkali facilities transition away from mercury, legislation should ensure excess mercury is properly managed and stored. Existing laws and regulations should help ensure a seamless transition from use into long term storage of excess elemental mercury. Because the proposed bill would prohibit export as of the date of enactment of the bill, prior to the date on which storage capabilities are required to be available under the Mercury Export Ban Act of 2008, it is important that the facilities comply with existing laws and regulations in managing the mercury in a safe and responsible way. The current bill language could imply lawful options for storage are limited.

To address this issue, we suggest revising the savings provision in Section 4 of the bill as follows:

> (d) SAVINGS PROVISION. -- Nothing in this section affects the ability or obligation of the owner or operator of any chlor-alkali facility to store elemental mercury (including as part of a mixture) or mercury compounds in accordance with all applicable laws, including section 5 of the Mercury Export Ban Act of 2008 (42 U.S.C. 6939f).

5. The bill provides that, as three facilities have done since 1996, chlor-alkili facilities may continue to operate so long as they transition out of use of the mercury cell process. The amended prohibition section, however, could be misread to suggest that a facility must be shut down and be replaced with an entirely new facility.

To address this issue, we suggest revising the new prohibition provision in Section 4 of the bill, as amended, such that in subsection (b)(2)(A) the words "or process" are added after the words "new manufacturing facility" each time it is used.

6. Additional technical suggestions.

(a) We recommend that the proposed TSCA amendment in Section 4 of the bill be codified as a new subsection (subsection 6(g)), rather than as a new section 6A. This would obviate the need for the conforming amendment to section 15 of TSCA at the end of the bill.

(b) We have some recommended changes to the findings section of the bill based on agency expertise.

> (i) Finding (2) states that "as many as 10 percent" of U.S. women of childbearing age have bloodstream mercury that "could pose risks" to unborn babies. Actually, based on Centers for Disease Control's National Health and Nutrition Examination Survey (NHANES), only 5.6% of women of childbearing age have exposures that exceed the reference dose (RfD). Further, the RfD is not a quantitative estimate of risk; thus, even the fact that a woman has a level slightly exceeding the RfD is not a basis for concluding that there is an increased risk. So the data does not support the statement about risks to unborn babies. The following language should be substituted.

TECHNICAL ASSISTANCE ONLY

"(2) Approximately five percent of women of childbearing age in the United States have methylmercury exposures from the consumption of fish that may be of public health concern. Recent findings by the U.S. Geologic Survey have found that mercury levels in the ocean are increasing, presumably due to human releases to the environment. Increased mercury in the oceans will inevitably lead to higher methylmercury levels in fish, resulting in higher risk and/or decreased health benefits from eating fish."

(ii) Fish is a significant source of methylmercury exposure, but there are other sources of mercury exposure such as dental amalgams, that do not expose people to methylmercury, therefore we would recommend in Finding (3) striking "mercury exposure" and inserting "methylmercury exposure."

(iii) Finding (6) states that there are seven domestic facilities now using the mercury cell chlor-alkali process. We are aware of only four such facilities that remain in the United States.

(iv) Finding (9) states that EPA or the chlor-alkali industry cannot adequately account for disposition of mercury or accurately estimate mercury emissions. Both EPA and the industry have data on these issues, so this language is not necessary.

TECHNICAL ASSISTANCE ONLY